Supreme Court E-Library

THIRD DIVISION

[G.R. No. 197525. June 4, 2014]

VISAYAS GEOTHERMAL POWER COMPANY, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; VALUE-ADDED TAX (VAT); SECTION 112 APPLIES TO CLAIMS FOR REFUNDS OR TAX CREDITS FOR UNUTILIZED CREDITABLE INPUT VAT.—** It has been definitively settled in the recent *En Banc* case of *CIR v. San Roque Power Corporation (San Roque)*, that it is Section 112 of the NIRC which applies to claims for tax credit certificates and tax refunds arising from sales of VAT-registered persons that are zero-rated or effectively zero-rated, which are, simply put, claims for unutilized creditable input VAT. Thus, under Section 112(A), the taxpayer may, within 2 years after the close of the taxable quarter when the sales were made, *via* an administrative claim with the CIR, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Under Section 112(D), the CIR must then act on the claim within 120 days from the submission of the taxpayer's complete documents. In case of (a) a full or partial denial by the CIR of the claim, or (b) the CIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim *via* an appeal with the CTA of the CIR decision or unacted claim, within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period.

2. **ID.; ID.; SECTION 229 PERTAINS TO RECOVERY OF TAXES ERRONEOUSLY COLLECTED AND DOES NOT APPLY TO CLAIMS FOR REFUND OR TAX CREDIT FOR UNUTILIZED CREDITABLE INPUT VAT.—** *The 2-year period under Section 229 does not apply to appeals before the CTA in relation to claims for a refund or tax credit for unutilized creditable input VAT.* Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected. *San Roque* stressed that "input VAT is not 'excessively' collected as understood

Supreme Court E-Library

under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper." It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT.

3. ID.; ID.; VALUE-ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; THE 120+30 DAY PERIOD IS MANDATORY AND JURISDICTIONAL; EXCEPTION.— Upholding the ruling in *Aichi*, *San Roque* held that the 120+30 day period prescribed under Section 112(D) is mandatory and jurisdictional. The jurisdiction of the CTA over decisions or inaction of the CIR is only appellate in nature and, thus, necessarily requires the prior filing of an administrative case before the CIR under Section 112. The CTA can only acquire jurisdiction over a case after the CIR has rendered its decision, or after the lapse of the period for the CIR to act, in which case such inaction is considered a denial. A petition filed prior to the lapse of the 120-day period prescribed under said Section would be premature for violating the doctrine on the exhaustion of administrative remedies. There is, however, an exception to the mandatory and jurisdictional nature of the 120+30 day period. The Court in *San Roque* noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers. Since the CIR has exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the Tax Code, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day period was mandatory and jurisdictional. Accordingly, the **general rule** is that the 120+30 day period is mandatory and jurisdictional from the effectivity of the 1997 NIRC on January 1, 1998, up to the present. As an **exception,** judicial claims filed from December 10, 2003 to October 6, 2010 need not wait for the exhaustion of the 120-day period.

Supreme Court E-Library

4. ID.; ID.; RECOVERY OF TAX ERRONEOUSLY AND ILLEGALLY COLLECTED; THE *ATLAS* DOCTRINE WHICH HELD THAT CLAIMS FOR REFUND OR CREDIT INPUT VAT MUST COMPLY WITH THE TWO-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 229 HAS NO RELEVANCE TO THE 120+30 DAY PERIOD FOR FILING JUDICIAL CLAIM.— [I]t was thoroughly explained in *San Roque* that the *Atlas* doctrine only pertains to the reckoning point of the 2-year prescriptive period from the date of payment of the output VAT under Section 229, and has no relevance to the 120+30 day period under Section 112 x x x. Thus, *Atlas* is only relevant in determining when to file an administrative claim with the CIR for refund or credit of unutilized creditable input VAT, and not for determining when to file a judicial claim with the CTA. From June 8, 2007 to September 12, 2008, the 2-year prescriptive period to file administrative claims should be counted from the date of payment of the output VAT tax. Before and after said period, the 2-year prescriptive period is counted from the close of the taxable quarter when the sales were made, in accordance with Section 112(A). In either case, the mandatory and jurisdictional 120+30 day period must be complied with for the filing of the judicial claim with the CTA, except for the period provided under BIR Ruling No. DA-489-03 x x x.

5. ID.; ID.; VALUE-ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; THE INTERPRETATION OF THE COURT OF THE MANDATORY AND JURISDICTIONAL NATURE OF THE 120+30 DAY PERIOD RETROACTS TO THE DATE THE NATIONAL INTERNAL REVENUE CODE WAS ENACTED.— Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith. Considering that the nature of the 120+30 day period was first settled in *Aichi*, the interpretation by the

Supreme Court E-Library

Court of its being mandatory and jurisdictional in nature retroacts to the date the NIRC was enacted. It cannot be applied prospectively as no old doctrine was overturned.

6. REMEDIAL LAW; ACTIONS; ESTOPPEL; DOES NOT APPLY TO THE GOVERNMENT, ESPECIALLY ON MATTERS OF TAXATION.— It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents. It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the February 7, 2011 Decision[1] and the June 27, 2011 Resolution[2] of the Court of

---

[1] *Rollo*, pp. 83-99; penned by Associate Justice Caesar A. Casanova, and concurred in by Associate Justice Ernesto D. Acosta, Associate Justice Juanito C. Castaneda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Olga Palanca-Enriquez, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Amelia R. Cotangco-Manalastas.

[2] *Id*. at 109-115.

Supreme Court E-Library

Tax Appeals *En Banc (CTA En Banc),* in CTA EB Case Nos. 561 and 562, which *reversed and set aside* the April 17, 2009 Decision of the CTA Second Division in CTA Case No. 7559.

The Facts:

Petitioner Visayas Geothermal Power Company *(VGPC)* is a special limited partnership duly organized and existing under Philippine Laws with its principal office at Milagro, Ormoc City, Province of Leyte. It is principally engaged in the business of power generation through geothermal energy and the sale of generated power to the Philippine National Oil Company *(PNOC),* pursuant to the Energy Conversion Agreement.

VGPC filed with the Bureau of Internal Revenue *(BIR)* its Original Quarterly VAT Returns for the first to fourth quarters of taxable year 2005 on April 25, 2005, July 25, 2005, October 25, 2006, and January 20, 2006, respectively.

On December 6, 2006, it filed an administrative claim for refund for the amount of ₱14,160,807.95 with the BIR District Office No. 89 of Ormoc City on the ground that it was entitled to recover excess and unutilized input VAT payments for the four quarters of taxable year 2005, pursuant to Republic Act (R.A.) No. 9136,[3] which treated sales of generated power subject to VAT to a zero percent (0%) rate starting June 26, 2001.

Nearly one month later, on January 3, 2007, while its administrative claim was pending, VGPC filed its judicial claim via a petition for review with the CTA praying for a refund or the issuance of a tax credit certificate in the amount of ₱14,160,807.95, covering the four quarters of taxable year 2005.

In its April 17, 2009 Decision, the CTA Second Division partially granted the petition as follows:

WHEREFORE, in view of the foregoing considerations, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED TO REFUND or, in the alternative, TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner the

[3] Electric Power Industry Reform Act of 2001 (EPIRA).

Supreme Court E-Library

reduced amount of SEVEN MILLION SIX HUNDRED NINENTY (sic) NINE THOUSAND THREE HUNDRED SIXTY SIX PESOS AND 37/100 (₱7,699,366.37) representing unutilized input VAT paid on domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005.

SO ORDERED.[4]

The CTA Second Division found that only the amount of ₱7,699,366.37 was duly substantiated by the required evidence. As to the timeliness of the filing of the judicial claim, the Court ruled that following the case of *Commissioner of Internal Revenue (CIR) v. Mirant Pagbilao Corporation (Mirant)*,[5] both the administrative and judicial claims were filed within the two-year prescriptive period provided in Section 112(A) of the National Internal Revenue Code of 1997 *(NIRC)*, the reckoning point of the period being the close of the taxable quarter when the sales were made.

In its October 29, 2009 Resolution,[6] the CTA Second Division denied the separate motions for partial reconsideration filed by VGPC and the CIR. Thus, both VGPC and the CIR appealed to the CTA *En Banc*.

In the assailed February 7, 2011 Decision,[7] the CTA *En Banc* *reversed* and *set aside* the decision and resolution of the CTA Second Division, and dismissed the original petition for review for having been filed prematurely, to wit:

WHEREFORE, premises considered:

i. As regards CTA EB Case No. 562, the Petition for Review is hereby DISMISSED; and

ii. As regards CTA EB Case No. 561, the Petition for Review is hereby GRANTED.

---

[4] *Rollo*, pp. 135-136.

[5] 586 Phil. 712 (2008).

[6] *Rollo*, pp. 138-143.

[7] *Id*. at 83-99.

Supreme Court E-Library

Accordingly, the Decision, dated April 17, 2009, and the Resolution, dated October 29, 2009, of the CTA Former Second Division are hereby REVERSED and SET ASIDE, and another one is hereby entered DISMISSING the Petition for Review filed in CTA Case No. 7559 for having been filed prematurely.

SO ORDERED.[8]

The CTA *En Banc* explained that although VGPC seasonably filed its administrative claim within the two-year prescriptive period, its judicial claim filed with the CTA Second Division was prematurely filed under Section 112(D) of the National Internal Revenue Code *(NIRC).* Citing the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[9] the CTA *En Banc* held that the judicial claim filed 28 days after the petitioner filed its administrative claim, without waiting for the expiration of the 120-day period, was premature and, thus, the CTA acquired no jurisdiction over the case.

The VGPC filed a motion for reconsideration, but the CTA En Banc denied it in the assailed June 27, 2011 Resolution for lack of merit. It stated that the case of *Atlas Consolidated Mining v. CIR (Atlas)*[10] relied upon by the petitioner had long been abandoned.

Hence, this petition.

ASSIGNMENT OF ERRORS

I

The CTA *En Banc* erred in finding that the 120-day and 30-day periods prescribed under Section 112(D) of the 1997 Tax Code are jurisdictional and mandatory in the filing of the judicial claim for refund. The CTA-Division should take cognizance of the judicial appeal as long as it is filed within the two-year prescriptive period under Section 229 of the 1997 Tax Code.

---

[8] *Id*. at 93.

[9] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[10] 551 Phil. 519 (2007).

Supreme Court E-Library

II

The CTA *En Banc* erred in finding that *Aichi* prevails over and/or overturned the doctrine in *Atlas*, which upheld the primacy of the two-year period under Section 229 of the Tax Code. The law and jurisprudence have long established the doctrine that the taxpayer is duty-bound to observe the two-year period under Section 229 of the Tax Code when filing its claim for refund of excess and unutilized VAT.

III

The CTA *En Banc* erred in finding that Respondent CIR is not estopped from questioning the jurisdiction of the CTA. Respondent CIR, by her actions and pronouncements, should have been precluded from questioning the jurisdiction of the CTA-Division.

IV

The CTA *En Banc* erred in applying *Aichi* to Petitioner VGPC's claim for refund. The novel interpretation of the law in *Aichi* should not be made to apply to the present case for being contrary to existing jurisprudence at the time Petitioner VGPC filed its administrative and judicial claims for refund.[11]

Petitioner VGPC argues that (1) the law and jurisprudence have long established the rule regarding compliance with the two-year prescriptive period under Section 112(D) in relation to Section 229 of the 1997 Tax Code; (2) *Aichi* did not overturn the doctrine in *Atlas*, which upheld the primacy of the two-year period under Section 229; (3) respondent CIR is estopped from questioning the jurisdiction of the CTA and *Aichi* cannot be indiscriminately applied to all VAT refund cases; (4) applying *Aichi* invariably to all VAT refund cases would effectively grant respondent CIR unbridled discretion to deprive a taxpayer of the right to effectively seek judicial recourse, which clearly

[11] *Rollo*, p. 27.

Supreme Court E-Library

violates the standards of fairness and equity; and (5) the novel interpretation of the law in *Aichi* should not be made to apply to the present case for being contrary to exisiting jurisprudence at the time VGPC filed its administrative and judicial claims for refund. *Aichi* should be applied prospectively.

Ruling of the Court

Judicial claim not premature

The assignment of errors is rooted in the core issue of whether the petitioner's judicial claim for refund was prematurely filed.

Two sections of the NIRC are pertinent to the issue at hand, namely Section 112 (A) and (D) and Section 229, to wit:

SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases**, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsections (A) and (B) hereof.

Supreme Court E-Library

In case of full or partial denial **of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**

SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[Emphases supplied]

It has been definitively settled in the recent *En Banc* case of *CIR v. San Roque Power Corporation (San Roque)*,[12] that it is Section 112 of the NIRC which applies to claims for tax credit certificates and tax refunds arising from sales of VAT-registered persons that are zero-rated or effectively zero-rated, which are, simply put, claims for unutilized creditable input VAT.

Thus, under Section 112(A), the taxpayer may, within 2 years after the close of the taxable quarter when the sales were made, via an administrative claim with the CIR, apply for the issuance of a tax credit certificate or refund of creditable input tax due

[12] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

Supreme Court E-Library

or paid attributable to such sales. Under Section 112(D), the CIR must then act on the claim within 120 days from the submission of the taxpayer's complete documents. In case of (a) a full or partial denial by the CIR of the claim, or (b) the CIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim via an appeal with the CTA of the CIR decision or unacted claim, within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period.

The 2-year period under Section 229 does not apply to appeals before the CTA in relation to claims for a refund or tax credit for unutilized creditable input VAT. Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected.[13] *San Roque* stressed that "input VAT is not 'excessively' collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper."[14] It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT.[15]

Upholding the ruling in *Aichi*,[16] *San Roque* held that the 120+30 day period prescribed under Section 112(D) is mandatory and jurisdictional.[17] The jurisdiction of the CTA over decisions or inaction of the CIR is only appellate in nature and, thus, necessarily requires the prior filing of an administrative case before the CIR under Section 112.[18] The CTA can only acquire jurisdiction over a case after the CIR has rendered its decision, or after the lapse of the period for the CIR to act, in which case

---

[13] *CIR v. Visayas Geothermal Power Company, Inc.*, G.R. No. 181276, November 11, 2013.

[14] *CIR v. San Roque Power Corporation, supra* note 12, at 392.

[15] *CIR v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422, 437; citing, *CIR v. Mirant Pagbilao Corporation*, 586 Phil. 712 (2008).

[16] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[17] *Supra* note 12, at 380.

[18] *CIR v. Visayas Geothermal Power Company, Inc., supra* note 13.

Supreme Court E-Library

such inaction is considered a denial.[19] A petition filed prior to the lapse of the 120-day period prescribed under said Section would be premature for violating the doctrine on the exhaustion of administrative remedies.[20]

There is, however, an exception to the mandatory and jurisdictional nature of the 120+30 day period. The Court in *San Roque* noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."[21] This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4[22] of the NIRC and, thus,

---

[19] *CIR v. Visayas Geothermal Power Company, Inc., supra* note 13; citing Section 7 of R.A. No. 1125, as amended by R.A. No. 9282 –

Sec. 7. Jurisdiction. – The CTA shall exercise:

"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

"1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

"2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

x x x x x x x x x

[Underscore supplied]

[20] *CIR v. San Roque Power Corporation, supra* note 12, at 397-398.

[21] *Id*. at 401.

[22] SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other

Supreme Court E-Library

applicable to all taxpayers. Since the CIR has exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246[23] of the Tax Code, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, where it was held that the 120+30 day period was mandatory and jurisdictional.

Accordingly, the **general rule** is that the 120+30 day period is mandatory and jurisdictional from the effectivity of the 1997 NIRC on January 1, 1998, up to the present. As an **exception,** judicial claims filed from December 10, 2003 to October 6, 2010[24] need not wait for the exhaustion of the 120-day period.

A review of the facts of the present case reveals that petitioner VGPC timely filed its administrative claim with the CIR on

---

matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[Underscore supplied]

[23] SEC. 246. Non- Retroactivity of Rulings. – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

[Underscore supplied]

[24] *CIR v. Visayas Geothermal Power Company, Inc., supra* note 13.

Supreme Court E-Library

December 6, 2006, and later, its judicial claim with the CTA on January 3, 2007. The judicial claim was clearly filed within the period of exception and was, therefore, not premature and should not have been dismissed by the CTA *En Banc*.

In the present petition, VGPC prays that the Court grant its claim for refund or the issuance of a tax credit certificate for its unutilized input VAT in the amount of ₱14,160,807.95. The CTA Second Division, however, only awarded the amount of ₱7,699,366.37. The petitioner has failed to present any argument to support its entitlement to the former amount.

In any case, the Court would have been precluded from considering the same as such would require a review of the evidence, which would constitute a question of fact outside the Court's purview under Rule 45 of the Rules of Court. The Court, thus, finds that the petitioner is entitled to the refund awarded to it by the CTA Second Division in the amount of ₱7,699,366.37.

Atlas doctrine has no relevance to the 120+30 day period for filing judicial claim

Although the core issue of prematurity of filing has already been resolved, the Court deems it proper to discuss the petitioner's argument that the doctrine in *Atlas*, which allegedly upheld the primacy of the 2-year prescriptive period under Section 229, should prevail over the ruling in *Aichi* regarding the mandatory and jurisdictional nature of the 120+30 day period in Section 112.

In this regard, it was thoroughly explained in *San Roque* that the *Atlas* doctrine only pertains to the reckoning point of the 2-year prescriptive period from the date of payment of the output VAT under Section 229, and has no relevance to the 120+30 day period under Section 112, to wit:

> The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant***. The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output

VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary.[25]

[Underscoring supplied]

Thus, *Atlas* is only relevant in determining when to file an administrative claim with the CIR for refund or credit of unutilized creditable input VAT, and not for determining when to file a judicial claim with the CTA. From June 8, 2007 to September 12, 2008, the 2-year prescriptive period to file administrative claims should be counted from the date of payment of the output VAT tax. Before and after said period, the 2-year prescriptive period is counted from the close of the taxable quarter when the sales were made, in accordance with Section 112(A). In either case, the mandatory and jurisdictional 120+30 day period must be complied with for the filing of the judicial claim with the CTA, except for the period provided under BIR Ruling No. DA-489-03, as previously discussed.

---

[25] *CIR v. San Roque Power Corporation*, *supra* note 12, at 397-398.

Supreme Court E-Library

The Court further noted that *Atlas* was decided in relation to the 1977 Tax Code which had not yet provided for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the CIR over claims for unutilized input VAT. Clearly then, the *Atlas* doctrine cannot be invoked to disregard compliance with the 120+30 day mandatory and jurisdictional period.[26] In *San Roque*, it was written:

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.[27]

At any rate, even assuming that the *Atlas* doctrine was relevant to the present case, it could not be applied since it was held to be effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 when *Mirant* was promulgated. The petitioner in this case filed both its administrative and judicial claims outside the said period of effectivity.

Aichi not applied prospectively

Petitioner VGPC also argues that *Aichi* should be applied prospectively and, therefore, should not be applied to the present case. This position cannot be given consideration.

Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes

---

[26] *Id*. at 385.

[27] *Id*. at 398.

Supreme Court E-Library

the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.[28]

Considering that the nature of the 120+30 day period was first settled in *Aichi*, the interpretation by the Court of its being mandatory and jurisdictional in nature retroacts to the date the NIRC was enacted. It cannot be applied prospectively as no old doctrine was overturned.

The petitioner cannot rely either on the alleged jurisprudence prevailing at the time it filed its judicial claim. The Court notes that the jurisprudence relied upon by the petitioner consists of CTA cases. It is elementary that CTA decisions do not constitute precedent and do not bind this Court or the public. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[29]

As regards the cases[30] which were later decided allegedly in contravention of *Aichi*, it is of note that all of them were decided by Divisions of this Court, and not by the Court *En Banc*. Any doctrine or principle of law laid down by the Court, either rendered *En Banc* or in Division, may be overturned or reversed only by the Court sitting *En Banc*.[31] Thus, the cases cited by the petitioner could not have overturned the doctrine laid down in *Aichi*.

---

[28] *Paras v. Paras*, 555 Phil. 786, 803 (2007); citing *Pesca v. Pesca*, 408 Phil. 713.

[29] *Nippon Express (Philippines) Corporation v. CIR*, G.R. No. 196907, March 13, 2013, 693 SCRA 457, 466; citing *CIR v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 336.

[30] *Microsoft Philippines, Inc. v. CIR*, G.R. No. 180173, April 6, 2011, 647 SCRA 398; *Silicon Philippines, Inc. v. CIR*, G.R. No. 172378, January 17, 2011, 639 SCRA 521; *Kepco Philippines Corporation v. CIR*, G.R. No. 179961, January 31, 2011, 641 SCRA 70.

[31] *Lu v. Lu Ym, Sr.*, G.R. No. 153690, February 15, 2011, 643 SCRA 23, 42.

Supreme Court E-Library

CIR not estopped

The petitioner's argument that the CIR should have been estopped from questioning the jurisdiction of the CTA after actively participating in the proceedings before the CTA Second Division deserves scant consideration.

It is a well-settled rule that the government cannot be estopped by the mistakes, errors or omissions of its agents.[32] It has been specifically held that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[33] Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people.[34]

Rules on claims for refund or tax credit of unutilized input VAT

For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit of unutilized creditable input VAT. They are as follows:

1. When to file an administrative claim with the CIR:

    a. General rule – Section 112(A) and *Mirant*

    Within 2 years from the close of the taxable quarter when the sales were made.

    b. Exception – *Atlas*

    Within 2 years from the date of payment of the output VAT, if the administrative claim was filed

---

[32] *Republic v. Lorenzo*, G.R. No. 172338, December 10, 2012, 687 SCRA 478, 490.

[33] *CIR v. Petron*, G.R. No. 185568, March 21, 2012, 668 SCRA 735, 764.

[34] *Philippine National Oil Company v. CA*, 496 Phil. 506, 577-578 (2005).

Supreme Court E-Library

from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).

2. When to file a judicial claim with the CTA:

   a. General rule – Section 112(D); *not* Section 229

      i. Within 30 days from the full or partial denial of the administrative claim by the CIR; or

      ii. Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC).

   b. Exception – BIR Ruling No. DA-489-03

      The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*).

WHEREFORE, the petition is **PARTIALLY GRANTED**. The February 7, 2011 Decision and the June 27, 2011 Resolution of the Court of Tax Appeals *En Banc*, in CTA EB Case Nos. 561 and 562 are **REVERSED** and **SET ASIDE**. The April 17, 2009 Decision and the October 29, 2009 Resolution of the CTA Former Second Division in CTA Case No. 7559 are **REINSTATED**.

Public respondent is hereby **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE**, in favor of the petitioner the amount of SEVEN MILLION SIX HUNDRED NINETY NINE THOUSAND THREE HUNDRED SIXTY SIX PESOS AND 37/100 (₱7,699,366.37) representing unutilized input VAT paid on domestic purchases of non-capital goods and services, services rendered by non-residents, and importations of non-capital goods for the first to fourth quarters of taxable year 2005.

Supreme Court E-Library

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, and *Villarama, Jr.,*[*] *JJ.,* concur.

Leonen, J., dissents consistent with position in *San Roque v. CIR,* G.R. No. 187485 (2013).

SECOND DIVISION

[G.R. No. 199211. June 4, 2014]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JERIC FERNANDEZ *y* JAURIGUE,** *appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ILLEGAL RECRUITMENT, DEFINED; A HIGHER PENALTY IS IMPOSED WHEN THE ILLEGAL RECRUITMENT IS COMMITTED BY A SYNDICATE OR IN LARGE SCALE AS IT IS CONSIDERED AN OFFENSE INVOLVING ECONOMIC SABOTAGE.— Article 38 of the Labor Code defines illegal recruitment as "any recruitment activities, including the prohibited practices enumerated under Article 34 of (the Labor Code), to be undertaken by non-licensees or non-holders of authority." The term "recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, including referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not, provided that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall

---

[*] Designated Acting Member in view of the vacancy in the Third Division per Special Order No. 1691 dated May 22, 2014